

## **REMARKS**

### **Claim Rejections**

Claims 20-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown et al. (U.S. 6,100,208) in view of Roe et al. (U.S. 5,834,381).

### **Drawings**

It is noted that the Examiner previously accepted the drawings as originally filed with this application.

### **Claims**

Claims 20-24 remain in the subject application.

The primary reference to Brown et al. teaches a non-woven first outer layer (12), a non-woven middle barrier layer (16) being a water impervious layer such as polyurethane, and a non-woven or woven second outer layer (14). Brown et al. does not teach the center barrier having a woven layer.

As noted on page 3 of the outstanding Office Action, Brown et al. "does not teach a reinforcing layer in the polyurethane layer." Since Brown et al. does not teach the middle layer having the woven fabric, Brown et al. does not teach the resin coating being located between the woven fabric of the middle layer and the upper layer on a first side of the middle layer, nor does Brown et al. suggest the resin coating being located between the woven fabric of the middle layer and the lower layer on a second side of the middle layer.

Brown et al. do not teach:

1. a middle layer having a woven fabric made of polyamide fibers and a water proof and air permeable polyurethane resin coating the polyamide fibers;
2. the water proof and air permeable polyurethane resin located on a first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer; nor do Brown et al. teach
3. the water proof and air permeable polyurethane resin located on a second surface of the middle layer is located directly between the woven fabric made

of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer.

The secondary reference to Roe et al. teaches a non-halogenated tri-laminate fabric including a polyester knitted or woven fabric scrim (14) pressed between an upper and lower thermoplastic olefin film (12); and a methane coating located on a top surface thereof.

Roe et al. is totally devoid of any suggestion of using the non-halogenated tri-laminate fabric as a middle layer located between two outer layers, more specifically the upper layer and the lower layer of the present invention. Therefore, applicant submits that it would not be obvious to utilize a portion of the fabric taught by Roe et al. in combination with the upper and lower layers of Brown et al. to reverse engineer the fabric of the present invention.

Roe et al. do not teach:

1. an upper layer having at least one layer of a first non-woven fabric, the upper layer is water repellant and air permeable;
2. a lower layer having at least one layer of a second non-woven fabric;
3. the water proof and air permeable polyurethane resin located on a first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer; nor do Roe et al. teach
4. the water proof and air permeable polyurethane resin located on a second surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer.

Even if the teachings of Brown et al. nor Roe et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: the water proof and air permeable polyurethane resin located on a first surface of the middle layer is located directly between the woven fabric made of the polyamide fibers and the at least one layer of the first non-woven fabric of the upper layer; nor does the combination suggest the water proof and air permeable polyurethane resin located on a second surface of the middle layer is located directly between the woven fabric

made of the polyamide fibers and the at least one layer of a second non-woven fabric of the lower layer.

It is a basic principle of the United States Patent Laws that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of the Applicant's disclosure to create a hypothetical or fictional combination which allegedly renders a claim obvious unless there is some direction in the selected prior art patents to combine the selected teachings in a matter to negate the patentability of the claimed subject matter.

The Courts have advocated that even if the prior art may be modified, the modification is not obvious unless the prior art suggests the desirability for the modification. For example, in *In re Fritch*, 922 F.2d 1260, 23 USPQ.2d 1780 (Fed. Cir. 1992), the Court held, at page 1783:

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

Neither Brown et al. nor Roe et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious claims 20-24.

### **Summary**

In view of the foregoing, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should the Examiner not be of the opinion that this case is in condition for allowance, it is requested that this amendment be entered for the purposes of appeal.


Application No. 10/673,412

Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: December 19, 2007

By:

  
John R. Guice, Jr.  
Reg. No. 39,699

TROXELL LAW OFFICE PLLC  
5205 Leesburg Pike, Suite 1404  
Falls Church, Virginia 22041  
Telephone: 703 575-2711  
Telefax: 703 575-2707

**CUSTOMER NUMBER: 40144**